SILVER KING
COMMUNICATIONS, INC.

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June 16, 1995

VIA FEDERAL EXPRESS

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: MM Docket No. 91-221
Review of the Commission's
Regulations Governing Television
Broadcasting

MM Docket No. 87-8
Television Satellite Stations
Review of Policy and Rules

Dear Mr. Caton:

Transmitted herewith on behalf of Silver King Communications, Inc. are an original and four copies of its Reply Comments in the above-referenced proceeding. An additional copy of these Reply Comments is enclosed herewith to be date-stamped by the Commission and returned to the undersigned in the enclosed self-addressed stamped envelope.

If there are any questions concerning this matter, please contact the undersigned.

Sincerely,

Michael Drayer
Executive Vice President
and General Counsel

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:

Review of the Commission's Regulations Governing Television Broadcasting	))))	MM Docket No. 91-221
Television Satellite Stations Review of Policy and Rules	))	MM Docket No. 87-8

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REPLY COMMENTS OF SILVER KING COMMUNICATIONS, INC.

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June 19, 1995

Before the
FEDERAL COMMUNICATIONS, INC.
Washington, D.C. 20554

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In the Matter of:

Review of the Commission's Regulations Governing Television Broadcasting	))))	MM Docket No. 91-221
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To: The Commission

REPLY COMMENTS
of
SILVER KING COMMUNICATIONS, INC.

Silver King Communications, Inc. ("SKC") hereby submits these Reply Comments in response to comments filed by other interested parties in the Commission's Further Notice of Proposed Rulemaking, MM Docket Nos. 91-221 and 87-8 (released January 12, 1995) concerning the Commission's television ownership rules and Local Marketing Agreements. Specifically, SKC herein addresses other parties' comments concerning the Commission's UHF discount and television satellite station rules and policies.

UHF DISCOUNT

In addition to SKC, four other parties addressed the Commission's UHF discount policy. SKC, The Association of Independent Television Stations, Inc. ("INTV") and the Tribune

Broadcasting Company support retention of the policy while Post-Newsweek Stations, Inc. ("PNS") and the Cedar Rapids Television Company ("CRTV") urge repeal of the policy.

Based upon the comments submitted in this proceeding, retention of the UHF discount is the only rational result the Commission can reach. PNS and CRTV provide no facts in support of their position, they simply offer conclusory statements favoring repeal and conjecture about the future.[1]

In contrast, two of the three commenting parties supporting retention of the UHF discount policy, SKC and INTV, have presented uncontroverted evidence supporting the need for, and public interest benefits of, a continuation of the policy. In the face of such evidence -- and no record evidence to the contrary -- the Commission has no rational basis to repeal the UHF discount policy.

Specifically, SKC and INTV have demonstrated that "... UHF stations suffer from numerous technical and economic handicaps."[2] The Grade B radius of UHF stations is 59.2% to 62.5% of VHF stations.[3] In order to overcome some of these technical disparities, UHF licensees incur astronomical electrical bills.[4] Moreover, the existence of must-carry has not eliminated the economic disparity or

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[1] See, e.g., PNS Comments at 7 ("... the difference between ownership of UHF and VHF stations from a technical and competitive standpoint is not significant enough to justify discounting UHF stations ..."). CRTV Comments at 8 ("... the Commission must look ahead to the day when all broadcasters will be required to operate a second, UHF channel to provide HDTV service during a period of transition to advanced TV") (emphasis original).

[2] INTV Comments at 36.

[3] Id.

[4] Id. ("In fact, at maximum effective radiated power, UHF station[s] [sic] require ten times more electrical power than low numbered VHF stations.") SKC Comments at 10. ("In the Phoenix market, according to Charles Allen, General Manager of Station KAET(TV), Channel 8, a $900,000 investment in a new transmitter would be required to make the signal of Station KNXV-TV, Channel 15 competitive and this change would increase the station's power bills from $60,000 to $300,000 per year.")

even the signal reach disparity between UHF and VHF stations.[5] Even if, arguendo, cable carriage has diminished some of UHF stations' technical disadvantages to some degree, there can be no assurance that must-carry will survive the court challenges it currently faces, thereby rendering even these minimal benefits perhaps only temporary.[6] Furthermore, as SKC demonstrated in its Comments, the advantages of VHF stations go far beyond these quantifiable technical and economic advantages. Actions of broadcasters speak louder than words, and the scramble for VHF affiliates among the networks over the past year, and the resulting ratings victory by Fox over CBS in a key demographic -- due largely to affiliate switches -- makes clear that the UHF discount is not a policy that has outlived its usefulness.[7] To the extent improvements in UHF technology in recent years justifiably caused the Commission to reexamine its UHF discount policy, the facts brought to the Commission's attention in this proceeding and changes in the broadcast television industry in the past year have reinforced the undeniable need for continuation of the UHF discount and reaffirmed the Commission's wisdom in originally adopting the policy.

TELEVISION SATELLITE STATIONS

SKC and three other entities, Thomas C. Smith ("Smith"), Lee Enterprises, Incorporated ("Lee") and Black Citizens for a Fair Media, et al. ("BCFM"), submitted comments addressing the Commission's rules and policies governing television satellite stations.

BCFM, the only party urging repeal of the television satellite ownership exemption, provides

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[5] INTV Comments at 24-29. SKC Comments at 11.

[6] SKC Comments at 12.

[7] Id. at 11.

nothing more than a series of conclusory statements in support of its position.[8] BCFM concludes that the exemption should be repealed because: (i) it harms viewpoint diversity; and (ii) the exemption's underlying rationale no longer exists because satellites are not longer restricted in the amount of programming they may originate.

BCFM misses the obvious point that eliminating an artificial limit on program origination increases potential program diversity in a market, which is a desirable end in itself. Moreover, there is no requirement that a satellite and its primary station be co-owned. Therefore, removing the 5% origination barrier may increase viewpoint diversity at the same time it increases program diversity. In any event, the true underlying rationale for the satellite exemption is not affected by eliminating the 5% origination limit.

As SKC noted in its Comments, the Commission previously recognized in this docket that the fundamental reason for continuing to exempt television satellite stations from the multiple ownership rules is that satellite operation results in the provision of television service to areas which otherwise would be unserved or more severely underserved. At the same time, the 1991 abolition of the 5% local origination limit allows the satellite to better serve its market and, as an added bonus, increase the amount of program diversity in that portion of the satellite's service area that also is served by the parent station. Through the strict enforcement of the 1991 standards, particularly the requirement that satellite status be granted only where no other party is ready and able to construct or purchase and operate a full-service station, the Commission can ensure that satellites will continue to serve the public interest where no other alternative exists.

Perhaps most importantly, however, BCFM's statement that satellites are incompatible with

[8] BCFM Comments at 38-39.

viewpoint diversity is logically flawed from a public policy perspective because the choice is not between having two unaffiliated full-service television stations and having one full-service television station and one affiliated television satellite station; it is between having one full-service television station (the second station never going on the air or going dark) and having one full-service television station and one television satellite station that may, or may not, be co-owned and may provide a significant amount of locally-originated programming. In other words, because satellite service is only permitted when full-service is not viable, the policy's impact is to add service that otherwise would not exist. It is thus clear that the television satellite ownership exemption serves the public interest.

Lee proposes that if the Commission eliminates its numerical cap limitation, but retains national audience reach restrictions, a satellite station's unduplicated audience "ought to be counted toward the cumulative national household reach."[9] While superficially appealing, this approach is nonetheless flawed because, while not as likely to eliminate satellite service as counting the station under numerical limits, it still imposes a disincentive on ownership of satellites while providing no countervailing benefits to be weighed against the Commission's goal of fostering service to otherwise unserved or underserved populations by satellite stations. Accordingly, Lee's proposal should be rejected.[10]

CONCLUSION

SKC and INTV have submitted compelling factual and legal arguments, as well as public

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[9] Lee Comments at 7.

[10] Like SKC, Smith believes the Commission should not count satellite stations with respect to the national ownership limits, and Smith further states that the Commission should encourage satellite service in unserved areas. Smith Comments at 4.

policy justifications, for retention of the Commission's UHF discount policy. Opponents of retention of the policy have provided no record evidence or sustainable arguments in support of their position. Accordingly, the Commission should retain the UHF discount which has served the public well and will continue to do so into the foreseeable future.

Likewise, opponents of the Commission's current ownership limits exemption for television satellite stations have failed to provide any factual basis or public policy justification for repealing or modifying the Commission's current policy. Therefore, the Commission also should retain the satellite station ownership exemption which makes possible television service to otherwise unserved or underserved areas.[11]

Respectfully submitted,

SILVER KING COMMUNICATIONS, INC.

By: ______________________

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June 19, 1995

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[11] As noted above, the weight of the evidence overwhelmingly supports retention of the UHF discount and television satellite station rules and policies. However, in the event the Commission does modify or repeal these rules and policies, discounted status and ownership exemptions should be grandfathered for existing UHF stations and television satellites, respectfully, to avoid inequitable and unnecessary disruption to station owners and their viewers.